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In Re:

JOHN PATRICK O'GRADY,

Debtor.

JOHN W. SYWILOK,

Plaintiff,

v.

John Patrick O'Grady, EverBank,
Bank of America, N.A., Internal Revenue
Service and Barry R. Donaldson,

Defendants.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

CHAPTER 11

CASE NO. 19-19513-JKS

ADV. PROC. NO.: 19-02213-JKS

DISTRICT COURT APPEAL
CASE NO.: 2:20-cv-18906-MCA

**DESIGNATION OF RECORD ON APPEAL
COMBINED WITH STATEMENT OF THE ISSUES
PURSUANT TO BANKRUPRTCY RULE 8009**

A. DESIGNATION OF RECORD ON APPEAL in Adv. Proc. No. 19-02213

Filing Date	#	Docket Text
10/24/2019	1	Adversary case 19-02213. Complaint by John W. Sywilok against John Patrick O'Grady; EverBank; Bank of America NA; Internal Revenue Service; Barry Roy Donaldson. Fee Amount \$350...(21 (Validity, priority or extent of lien or other interest in property)) (Attachments: # 1 Exhibit A # 2 Adversary Proceeding Cover Sheet # 3 Summons # 4 Pre Trial Instructions # 5 Joint Order Scheduling Pretrial Proceedings and Trial # 6 Joint Mediation Order) (Kopelman, Michael) (Entered: 10/24/2019)

05/18/2020	19	Order Staying Adversary Proceeding. Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 5/18/2020. (zlh) (Entered: 05/18/2020)
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B. DESIGNATION OF RECORD ON APPEAL in Case No. 19-19513

Filing Date	#	Docket Text
09/21/2020	131	Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) (Entered: 09/21/2020)
10/13/2020	139	In support of (related document: 119 Motion (Generic) filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Certification of Edith Josephson) (Kopelman, Michael) (Entered: 10/13/2020)
10/16/2020	142	Document re: Objection to confirmation of plan (related document: 131 Ch 11 Small Business Plan filed by Debtor John Patrick O'Grady, 139 Support filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) Modified on 10/19/2020 (dmc). Incorrect Event. (Entered: 10/16/2020)
10/16/2020	145	Response to (related document: 139 in support of (related document: 119 Motion (Generic) filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Certification of Edith Josephson) filed by Attorney Kopelman & Kopelman LLP) filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Attachments: # 1 Certification # 2 Exhibit A # 3 Exhibit B) (Di Iorio, John) (Entered: 10/16/2020)
10/19/2020	146	Objection to Confirmation of Plan (related document: 131 Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 10/19/2020)
10/19/2020	147	Response to (related document: 145 Response to (related document: 139 in support of (related document: 119 Motion (Generic) filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Certification of Edith Josephson) filed by Attorney Kopelman & Kopelman LLP) filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Attachments: # 1 Certification # 2 Exhibit A # 3 Exhibit B) (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Certification of Thomas Colitsas # 2

		Exhibit A) (Kopelman, Michael) (Entered: 10/19/2020)
10/20/2020	149	Supplemental Objection to Confirmation of Plan (related document: 146 Objection to Confirmation of Plan (related document: 131 Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. Filed by Attorney Kopelman & Kopelman LLP, 147 Response to (related document: 145 Response to (related document: 139 in support of (related document: 119 Motion (Generic) filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Certification of Edith Josephson) filed by Attorney Kopelman & Kopelman LLP) filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Attachments: # 1 Certification # 2 Exhibit A # 3 Exhibit B) (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Certification of Thomas Colitsas # 2 Exhibit A) filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 10/20/2020)
10/23/2020	152	Amended Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) (Entered: 10/23/2020)
10/23/2020	155	Document re: Letter Regarding Confirmation Hearing (related document: 152 Ch 11 Small Business Plan filed by Debtor John Patrick O'Grady) filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) (Entered: 10/23/2020)
10/26/2020	156	Document re: Letter (related document: 152 Ch 11 Small Business Plan filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 10/26/2020)
11/03/2020	160	Objection to Confirmation of Plan (related document: 152 Amended Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered 11/03/2020)
11/04/2020	162	Amended Objection to Confirmation of Plan (related document: 152 Amended Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) filed by Debtor John Patrick O'Grady, 160 Objection to Confirmation of Plan (related document: 152 Amended Chapter 11 Small Business Plan Filed by John P. Di Iorio on behalf of John Patrick O'Grady. (Di Iorio, John) filed by Debtor John Patrick O'Grady) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered 11/04/2020)

11/16/2020	168	Document re: Letter filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 11/16/2020)
12/02/2020	173	Order Confirming Chapter 11 Plan (related document: 152 Ch 11 Small Business Plan filed by Debtor John Patrick O'Grady, 157 Order Setting Deadlines and Scheduling Confirmation Hearing (Subchapter V)). Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 12/2/2020. (zlh) (Entered: 12/02/2020)
12/16/2020	180	Notice of Appeal to District Court. (related document: 173 Order Confirming Chapter 11 Plan). Fee Amount \$298. Filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP, John W. Sywlok. Appellant Designation due by 12/30/2020. Transmission of Designation Due by 01/15/2021. (Kopelman, Michael) (Entered: 12/16/2020)
		Transcript regarding Hearing Held 11/10/2020 (related document: Hearing Held). (Tracy Gribben Transcription) (Entered: / /2020)

C. STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

1. Debtor did not bear his burden of proof that his amended plan satisfied all applicable confirmation requirements under 11 U.S.C. § 1129 (a) and 11 U.S.C. § 1191 of the Bankruptcy Code.

A) 11 U.S.C. § 1129 (a)(3) was not satisfied because Debtor's amended plan was not proposed in good faith and neither with honesty nor good intentions.

B) 11 U.S.C. § 1129 (a)(11) was not satisfied because Debtor did not prove that his amended plan is not likely to be followed by liquidation of the Debtor.

C) 11 U.S.C. § 1191 (3)(A)(1) was not satisfied because Debtor did not bear his burden of proof that he will be able to make or that there is a reasonable likelihood that he will be able to make all payment under his amended plan.

2. Order of confirmation improperly contains a settlement with creditor Barry R. Donaldson because no Notice of Settlement of case or Controversy pursuant to D.N.J. L.B.R. 9019-3 was filed or prosecuted.

3. Assuming, arguendo, that filing and prosecuting Notice of Settlement of Case or Controversy was not required, the record contains no or inadequate findings that the factors set forth in *In re Martin*, 91 F. 3d 989, 993 (3d Cir. 1996) were properly satisfied.

4. The Court should not have stayed the adversary proceeding the former Chapter 7 Trustee initiated against Barry R. Donaldson to void his alleged lien. Administrative creditor Kopelman & Kopelman LLP had standing to pursue it in the converted Chapter 11 case pursuant to Official Committee of Unsecured Creditors of *Cybergenics Corp. ex rel Cybergenics Corp. v. Chinery*, 330. F. 3d 548, 564-66 (3d Cir. 2003).

Respectfully submitted,

KOPELMAN & KOPELMAN LLP

Dated: December 23, 2020

BY: /s/ Michael S. Kopelman
Michael S. Kopelman, Esq.
*Attorneys for former Chapter 7 Trustee
John W. Sywilok and Administrative Creditor
Kopelman & Kopelman LLP*